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4 Number of Pages (including this page)

Date: February 22, 2005
To: Mai, Anh D. - 2814
Location: United States Patent and Trademark Office
Fax No.: (703) 872-9306
From: Joseph T. Van Leeuwen - 44,383
Subject: 10/696,079- Lim, Sangwoo et al.

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MESSAGE:

Enclosed herewith, please find a FORMAL AMENDMENT for filing in the below-identified application.

ALL ITEMS MARKED WITH AN "X" ARE INCLUDED:

1.	x	1 page Facsimile Cover Sheet
2.	x	3 page Restriction Election

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PLEASE GIVE THESE PAPERS TO:

EXAMINER: Mai, Anh D.
GROUP ART UNIT: 2814
SERIAL NO.: 10/696,079
FILED: 29 OCTOBER 2003
INVENTOR: LIM, SANGWOO ET AL.

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DOCKET NO. SC12659TP

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S) Lim , Sangwoo et al. GROUP ART UNIT: 2814
APPLN. NO.: 10/696,079 EXAMINER: Mai, Anh D.
FILED: 29 October 2003
TITLE: MULTIPLE GATE DIELECTRIC STRUCTURE AND METHOD FOR
FORMING

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RESTRICTION ELECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated 02 February 2005, and Examiner's comments with regard thereto, please enter the following amendments in the above-entitled application, without prejudice or disclaimer. No extension of time is believed necessary. However, if an extension is required, the extension is requested and the Commissioner is hereby authorized to charge Deposit Account 503079, Freescale Semiconductor, Inc. for any such extension of time.

If Applicant has overlooked any additional fees, or if any overpayment has been made, the Commissioner is hereby authorized to credit or debit Deposit Account 503079, Freescale Semiconductor, Inc.

Restriction Election

Applicants elect Group I claims, as set forth by the Examiner, for substantive Examination. Applicants currently withdraw claims 25-28 (Group II) from consideration at this time, with traversal.

Traversal of Restriction Requirement

Applicants note that claims 25-28 are directed towards an integrated circuit that is created using the method claimed in independent claim 1. Therefore, Applicants submit that the restriction required by the Examiner is improper under current patent rules and the Manual of Patent Examining Procedures. Specifically, under MPEP § 806.05(f), the method (process) and integrated circuit (apparatus) are not distinct inventions and it is therefore improper to restrict Applicants' method of making the dielectric structure and the apparatus of the dielectric structure within the integrated circuit. MPEP § 806.05(f) specifically states:

806.05(f) Process of Making and Product Made - Distinctness

A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different process.

Allegations of different processes or products need not be documented.

A product defined by the process by which it can be made is still a product claim (*In re Bridgeford*, 357 F.2d 679, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process; defining the product in terms of a process by which it is made is nothing more than a permissible technique that applicant may use to define the invention.

If applicant convincingly traverses the requirement, the burden shifts to the examiner to document a viable alternative process or product, or withdraw the requirement.

Applicants have successfully traversed the restriction requirement. Pursuant to MPEP § 806.05(f), the burden has shifted to the Examiner to document a viable alternative process or product. In particular, the Examiner is required to show either (1) that Applicants' claimed method of creating a dielectric structure is not an obvious process of making Applicants' claimed integrated circuit that includes the dielectric structure, or (2) that Applicants' claimed integrated circuit that includes the dielectric structure can be made by another materially different process than the method claimed by Applicants.

Because of the interrelationship between Applicants' method and apparatus claims, Applicants are convinced that the Examiner is unlikely to satisfy the burden set forth under MPEP § 806.05(f). If the Examiner is unable to satisfy this burden, then the Examiner must withdraw the restriction requirement in accordance with MPEP § 806.05(f).


Respectfully submitted,

SEND CORRESPONDENCE TO:

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By:


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